

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of) Group Art Unit: 1793
)
Nyberg et al.) Examiner: Ngoclan Thi Mai
)
Serial No: 10/796,424) Confirmation No. 1883
)
Filing Date: 3/8/2004) Attorney Docket No.: 14185-B
)
For: Feedstock composition and method of)
using same for powder metallurgy forming of)
reactive metals)

MAIL STOP PETITIONS
Office of Petitions
Commissioner for Patents
PO Box 1450
Alexandria, VA 22373-1450

Declaration of Allan C. Tuan in support of
APPLICANT'S PETITION TO WITHDRAW HOLDING OF UNINTENTIONAL
ABANDONMENT

My name is Allan C. Tuan, and I am an adult of legal capacity residing at Richland, Washington and make the following declarations from my own personal knowledge:

1. I received a Final Office Action sent from the USPTO on May 13, 2007. This Office Action set forth an indication that, while various claims of the Application were maintained as rejected, several claims of the application were indicated as allowable (claims 41, 42 and 152) and several other claims (6, 8, 27, 29-35, 37-39, 43-53) were objected as being dependent upon a rejected base claim but were indicated as being allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claim. A shortened statutory period of three months was provided in which to file a reply. (See attached Exhibit 1, which is a true and correct copy of the Final Office Action).

2. On September 10, 2007 a reply, together with a fee and petition for a one month extension was electronically filed and received at the United States Patent and Trademark Office. This reply, a true and correct copy of which is attached as Exhibit 2 to the Declaration of Allan Tuan, thankfully acknowledged the Examiner's prior allowance of various claims and provided amended claims that included the subject matter that the Examiner had previously indicated as being allowable. In this amended form, I believed that the claims of the application were then in condition for allowance.

3. In view of these amendments, I then made a point of reviewing PAIR on a regular basis looking for the date in which a Notice of Allowance would be sent. Nothing appeared. With the statutory deadline approaching, I placed a call to Examiner Mai, who was the Examiner assigned to this case, on November 13, 2007. She was not available but returned my phone call the following day. In our telephone conversation, Examiner Mai indicated that while PAIR showed that the aforementioned response had been received by the USPTO on September 10, 2007, it had not been actually entered into the PALM system at the USPTO. Therefore, she had not reviewed the Office Action.

4. The Examiner then indicated that, prior to the end of the statutory period, she would review the office action and provide a response prior to the end of the statutory period. In a subsequent phone conversation Examiner Mai indicated to me that a Notice of Allowance had been prepared and sent from the USPTO on Nov. 15, 2007.

5. No other correspondence related to this case was then received from the USPTO until January 16, 2008 when a notice was received that indicated that the application was abandoned. This notice of abandonment indicated that no Response


to the May 17, 2007 Final Office Action had been received and that the Response which had been received on September 10, 2007 was non-responsive. (A true and correct copy of the Notice of Abandonment is attached as Exhibit 3).

6. After receiving the Notice of Abandonment, I left voice messages with the Examiner and the Examiner's supervisor. A return phone call from the Examiner's supervisor at the USPTO revealed that in a subsequent review of the application, the previous findings of allowability had been over turned, and thus the prior response which put the application in condition for allowance in view of previous representations made by the USPTO were now null and void.

7. I was never provided with a Notification regarding the overturning of previously allowed claims, and thus never had an opportunity to respond to the new rejection. I relied upon the representations which had been made by the Examiner and amended the application in a way so as to incorporate the previously designated subject matter into a form that would allow for this application to pass on for allowance.

All statements made herein and of my own knowledge are true and all statements made on information are believed to be true; and further, these statements were made with the knowledge that willful false statements and like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that any such willful false statements made may jeopardize the validity of the application or any patent issuing thereon.

Date Feb. 11, 2008


Allan C. Tuan